

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 14-11229 (SCC)

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6 In the Matter of:

7
8 IKEDA, INC.,

9 Debtor.

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11 - - - - - x

12
13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16
17 August 6, 2014

18 11:16 AM

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21
22 B E F O R E :

23 HON SHELLEY C. CHAPMAN

24 U.S. BANKRUPTCY JUDGE

25

1 Hearing re: Doc #7 Application to Employ Law Offices of
2 Robert L. Geltzer as Attorney for the Trustee

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4 Hearing re: Doc #8 Application to Employ Davis, Graber,
5 Plotzker & Ward, LLP as Accountant for the Trustee

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25 Transcribed by: Jamie Gallagher

1 A P P E A R A N C E S :

2 LAW OFFICE OF ROBERT GELTZER

3 Attorney for the Trustee

4 1556 3rd Avenue #505

5 New York, NY 10128

6

7 BY: ROBERT GELTZER, ESQ.

8

9 UNITED STATES DEPARTMENT OF JUSTICE

10 Attorney for the U.S. Trustee

11 Office of the U.S. Trustee

12 201 Varick Street

13 Suite 1006

14 New York, NY 10014

15

16 BY: ANDREA B. SCHWARTZ, ESQ.

17

18 DAVIS, GRABER, PLOTZKER & WARD, LLP

19 Attorney for the

20 150 East 58th Street

21 20th Floor

22 New York, NY 10155

23

24 BY: ANDREW W. PLOTZKER, CPA

25

1 P R O C E E D I N G S

2 THE COURT: Mr. Geltzer, come on up. Ikeda, Inc.
3 Well, Mr. Geltzer, I learned a new word yesterday as I was
4 preparing for this hearing.

5 MR. GELTZER: I beg your pardon, Judge?

6 THE COURT: I learned a new word, but I'm not
7 exactly sure how to pronounce it.

8 MR. GELTZER: Logomachy.

9 THE COURT: Logomachy. I'm so excited. I love
10 words. That's a very good word.

11 MR. GELTZER: At least I did one thing right.

12 THE COURT: You did one thing right.

13 MR. GELTZER: Good morning, Your Honor, do you
14 want my appearance on the record?

15 THE COURT: Sure.

16 MR. GELTZER: I'm Robert L. Geltzer, trustee and
17 proposed counsel to the trustee. Your Honor, these are my
18 motions for orders to retain my firm as counsel --

19 THE COURT: Right.

20 MR. GELTZER: -- to me as trustee and to retain
21 Davis Graber as accountant to the trustee. Mr. Plotzker
22 from Davis Graber is here.

23 Your Honor, there are two typos in my paper which
24 I would like to call --

25 THE COURT: Okay.

1 MR. GELTZER: -- to the Court's attention for
2 which I apologize. First, on page 12, the second bullet,
3 first line, third word from the end, should the "cases", not
4 "case".

5 THE COURT: Which bullet? The second bullet?

6 MR. GELTZER: Page 12, second bullet.

7 THE COURT: "All the cases", okay.

8 MR. GELTZER: And page 15, first bullet, seventh
9 line, fourth word from the end should be "is", not "are".

10 THE COURT: Okay.

11 MR. GELTZER: Now, Judge, while I stand on my
12 papers I wish to make -- to state three quick things.

13 THE COURT: Okay.

14 MR. GELTZER: Thing one is that when I first read
15 the United States Trustee's objection, I thought right away
16 of that Peggy Lee song. Do you know the song I mean, If
17 That's All There Is, because if that's all there is by the
18 cases that they cite in their papers without any statutory
19 predicate, than their opposition, I think, simply cannot be
20 sustained.

21 Thing two was that just as Your Honor wrote in GSC
22 Group, there was "no coherent, let alone compelling,
23 explanation of this extraordinary measure." The proposed
24 language adds nothing. It makes no sense when the UST and
25 the Courts are the final arbiters, a fee's to be paid

1 regardless of the rates asked for for the amounts billed.

2 THE COURT: Let me ask you a question.

3 MR. GELTZER: Yes.

4 THE COURT: You file your retention application,
5 you disclose your fees, right? Surely it couldn't be the
6 case that you get retained and the next month you triple
7 your fees and you don't tell anyone. In your view, okay,
8 and I will put Ms. Schwartz through her paces as well, but
9 in your view, surely that wouldn't be okay, right? That
10 wouldn't be okay to do that. I know it's not this case, but
11 I'd like to tease out, you know, kind of the parameters --

12 MR. GELTZER: Of course not.

13 THE COURT: -- by looking to an extreme example
14 and I'm not suggesting you would ever do that, but surely
15 that wouldn't be good.

16 MR. GELTZER: Of course not, Your Honor.

17 THE COURT: Right?

18 MR. GELTZER: That would be -- simply put --

19 THE COURT: It would be --

20 MR. GELTZER: -- that would be wrong.

21 THE COURT: That would be wrong. That would be
22 misleading the Court --

23 MR. GELTZER: That would be a misrepresentation,
24 misleading the Court.

25 THE COURT: Right.

1 MR. GELTZER: But even if someone had the
2 unmitigated audacity to do that, and even if they
3 intentionally wanted to mislead the Court, at the end of the
4 day --

5 THE COURT: The U.S. Trustee would do what they
6 did in GSC --

7 MR. GELTZER: -- is going to see it, and the
8 Court --

9 THE COURT: -- and come in and say, disallow all
10 the fees.

11 MR. GELTZER: -- is going to be irate and say,
12 counsel, just three months before?

13 THE COURT: Right.

14 MR. GELTZER: So there's the protection there.
15 The safeguard is there. Moreover, my 10 percent solution
16 would take care of that problem if there is one.

17 THE COURT: Is that another literary illusion?

18 MR. GELTZER: You know, there's the Sherlock
19 Holmes 2 percent.

20 THE COURT: Sherlock Holmes, 7 percent.

21 MR. GELTZER: I'd rather be doing that in
22 literature than this, Your Honor.

23 THE COURT: Okay. So what's thing number 3?

24 MR. GELTZER: But then -- and it makes no sense.
25 No abuse crying out for correction is cited by the UST to

1 rise to the magnitude of a "compelling reason" for the
2 proposed language. It comes out of the blue. Their
3 language comes out of the blue. And it comes out of the
4 blue after decades of Courts signing thousands of retention
5 orders without the proposed language. There --

6 THE COURT: But also signing thousands of
7 retention orders with the proposed language, right?

8 MR. GELTZER: I don't believe -- I'm sorry, I
9 obviously didn't check --

10 THE COURT: I mean, I didn't --

11 MR. GELTZER: -- the thousands of orders, but I
12 don't --

13 THE COURT: -- I didn't either, but I recall from
14 my 27 years in private practice, I'm not the only one who
15 can make the "I've been doing this for a long time"
16 statement. I mean, you folks are not the only ones who can
17 do that. But in my 27 years of practice, including my eight
18 years of being in charge of all the fees in the Adelphia
19 case, one of the largest cases ever filed in this Court, I
20 recall vividly when a rate increase went into effect. There
21 was a supplemental affidavit that was filed on the docket.
22 I never even thought about whether it was required by the
23 statute, by the rules. It just seemed like a best practice
24 and something that one ought to do. So -- and I'm reading
25 into your olive branch that you don't disagree with that,

1 that as a best practice, it's not a bad idea.

2 MR. GELTZER: I disagree wholeheartedly with the
3 proposed language. I obviously don't disagree with my 10
4 percent solution. But you see, in the Adelpia case that
5 went on for eight years as you just said, I think you said
6 eight years, Your Honor, involving hundreds of millions of
7 dollars over eight years, that's a lot more reasonable than
8 that supplemental disclosure should be voluntarily made than
9 it is in Chapter 7 cases where a trustee can have hundreds
10 of cases. And if he makes one mistake, he's in violation of
11 a Court order. And as I said in my letter --

12 THE COURT: What do you mean by the one mistake?

13 MR. GELTZER: If he forgets to submit a -- one of
14 the supplemental affidavits in case X, Y, Z -- makes one
15 mistake, doesn't submit it. He's in violation of the
16 retention order that said he would, all right? And the
17 Court knows, as I said in my papers, that if you're removed
18 from one case for a violation of an order, you're removed
19 from all your cases. That's kind of harsh. That's kind of
20 harsh.

21 In addition, as I said in my letter and I don't
22 make any secret about it, I'm particularly concerned about
23 that because of certain treatment I've received from a
24 couple of people in the Office of the United States Trustee
25 over the last year. You might think things are being looked

1 at a little bit more seriously or I've been scrutinized on a
2 couple of things more so. So I'm particularly sensitive to
3 that. But that doesn't matter. I still think the language
4 is wrong. There's no statutory basis or any "compelling
5 reason" --

6 THE COURT: So you agree with Ms. Schwartz's
7 statement that you -- a professional, generally, and this is
8 largely was GSC was about, although there, there was --
9 there were violations of statutory provisions, that the
10 professional does proceed at his or her peril to the extent
11 that there is not disclosure of something that someone might
12 later say ought to have been disclosed, right?

13 MR. GELTZER: Someone might say --

14 THE COURT: You proceed at your peril by -- in
15 other words, by -- you raise your rates in a case and you
16 get to the end of the day and it --

17 MR. GELTZER: You don't get paid.

18 THE COURT: You don't get paid.

19 MR. GELTZER: Right.

20 THE COURT: I mean, look, I mean, I understand in
21 some cases it would be a high class problem, right, for you
22 to have collected enough that you could actually assert a
23 full claim for all the fees. I mean, my experience is that
24 it's as likely as not that the trustee and his or her
25 professionals take a reduction because at the end of the day

1 in order for there to be any distribution, there needs to be
2 a reduction.

3 MR. GELTZER: So often that happens, most of the
4 time that happens. But yes, you proceed at your peril. You
5 raise the rates, especially in the extreme example that the
6 Court gave. If someone does that, not only, you know, in
7 that situation if I were the Court I'd not only wouldn't
8 give him the raised rate, I would look at why they did it
9 and maybe cut the original rate, you know, with that kind of
10 phoniness going on.

11 THE COURT: Right, well -- right, right.

12 MR. GELTZER: So here there's no compelling reason
13 to seek what I regard as an extraordinary measure. So just
14 as Your Honor was perplexed in GSC, I'm perplexed here.

15 And my third point -- my third thing is just this
16 morning at 9:33, I believe, Your Honor entered an order in
17 the Benchmark Solution's case in which I sought to retain
18 and did Mr. Wolf's firm. There was no opposition to that as
19 I said in my response to the UST's opposition, and the Court
20 entered the order without the proposed language but with my
21 10 percent solution. So I'm perplexed and it seems if it's
22 right there --

23 THE COURT: Well, look -- look, I mean, I look,
24 you know, I -- when I see that the U.S. Trustee signs off --
25 I never enter a fee order without the U.S. Trustee signing

1 off.

2 MS. SCHWARTZ: Well, I didn't sign off on that,
3 Your Honor.

4 THE COURT: But your office did.

5 MS. SCHWARTZ: I'm the person. I would have
6 signed off. I'm the -- I'm assigned to Mr. Geltzer. I did
7 not sign off on that order.

8 THE COURT: Okay, hold on, let me get -- I need to
9 get to the bottom of this. We entered an order without a
10 U.S. Trustee signoff?

11 MR. GELTZER: Yes, because it was made on a motion
12 as is this. It was a motion.

13 THE COURT: Okay.

14 MR. GELTZER: And there was no opposition to the
15 motion.

16 THE COURT: And there was no opposition, okay.
17 What I'm saying is that -- I mean, there's a number of
18 different paths to get an order entered because I like to
19 try to be efficient. So when it's -- often time firms will
20 just submit the orders and if there's not a U.S. Trustee
21 signoff, my chambers is directed to get a U.S. -- for the
22 debtor, whoever professional, to get the U.S. Trustee's
23 signoff and I don't enter it. If this was a motion and --
24 with an objection deadline and there's no objection, then
25 I'm going to enter the order.

1 MR. GELTZER: Yes, the UST has held --

2 THE COURT: Wait, but hold on.

3 MR. GELTZER: I'm sorry.

4 THE COURT: I'm just trying to get to the bottom
5 of this, Ms. Schwartz.

6 MS. SCHWARTZ: Just on that issue, yes, Your
7 Honor.

8 THE COURT: Did something happen here that
9 shouldn't have happened?

10 MS. SCHWARTZ: Yes, it was understood that there
11 wouldn't be any orders being submitted to the Court until
12 this issue was resolved with Your Honor. All the other --

13 THE COURT: That was not --

14 MS. SCHWARTZ: I understand.

15 THE COURT: I had no way of knowing that.

16 MS. SCHWARTZ: But that agreement was with me and
17 Mr. Geltzer's office. Therefore, I was not aware that there
18 was another application pending. All of the other
19 applications have been held in abeyance, as cited in
20 Mr. Geltzer's papers, pending resolution of this issue.

21 THE COURT: Okay, but --

22 MR. GELTZER: That's not -- I'm sorry, Judge.

23 THE COURT: Can we -- hold on --

24 MR. GELTZER: That's not accurate because --

25 THE COURT: Can we stop for a moment because I

1 need to make sure that my process is -- that I haven't done
2 something inappropriate. There was -- I didn't know about
3 what you're now telling me, okay? I had no way of knowing
4 that. So, just to clear my chambers, okay?

5 MS. SCHWARTZ: Your Honor, I'm not saying that you
6 did. I --

7 THE COURT: I had no way of --

8 MS. SCHWARTZ: That was my agreement with
9 Mr. Geltzer. And I had gone through with Mr. Geltzer's
10 staff, any case I knew about with respect to retentions.
11 Usually what happens, Your Honor, with a Chapter 7 trustee
12 is that they send the U.S. Trustee's office their
13 applications to retain professionals for --

14 THE COURT: Right.

15 MS. SCHWARTZ: -- as Your Honor knows --

16 THE COURT: Right.

17 MS. SCHWARTZ: -- U.S. Trustee review and sign
18 off --

19 THE COURT: And sign off.

20 MS. SCHWARTZ: -- on the no objection line.

21 THE COURT: Right.

22 MS. SCHWARTZ: Mr. Geltzer has taken a different
23 tact because this issue is a very important issue to him and
24 he decided to put them on for motion. That's not the way
25 I've worked with other trustees, Your Honor. I wasn't aware

1 of that. My understanding was that today would be the day
2 to argue with the Court over the legality and all the
3 issues, practicality, et cetera regarding this provision.

4 THE COURT: Okay, so let me just put this issue to
5 the side for -- just let's not fight about this one right
6 now.

7 MR. GELTZER: But it's not accurate, Judge. I
8 just want to correct -- if you'll let me correct an
9 inaccuracy?

10 THE COURT: Okay, you -- go ahead. And then I
11 want to talk to Ms. Schwartz, okay?

12 MR. GELTZER: There are -- and I only have one
13 more minute after that.

14 THE COURT: Okay.

15 MR. GELTZER: There are many applications of mine
16 that have been held up -- that have been sent to the UST,
17 Eastern and Southern Districts, in the normal course and
18 they've held up signing off on them. And the case before
19 Your Honor, Ikeda and Benchmark were two of them. On these
20 two cases, therefore, and I have cases before Judge
21 Bernstein, a couple in the Eastern District, because the UST
22 wouldn't sign off on that without the language, I've made
23 motions as I did in this one to have the retention orders
24 approved. The U.S. -- that -- there was no agreement that I
25 wouldn't make the motion. In fact, I told them I would and

1 I said in my papers that I would. So, the UST's --

2 MS. SCHWARTZ: To clarify, Your Honor, it would be
3 adjourned --

4 MR. GELTZER: Excuse me. Let me just finish --

5 MS. SCHWARTZ: -- before he --

6 MR. GELTZER: Let me just have, let me just
7 finish --

8 THE COURT: Stop.

9 MR. GELTZER: -- the sentence, please.

10 THE COURT: Stop. You both know better.

11 MS. SCHWARTZ: Well --

12 MR. GELTZER: Just let me finish this sentence,
13 please.

14 THE COURT: Okay, hold on.

15 MR. GELTZER: There was no agreement not to make
16 the motion. They knew of the motion. They were served with
17 the motion. Just like they were served with this motion and
18 opposed it, they were served with that motion. It's not my
19 responsibility if they don't do anything after they're
20 served. You know, I served them with the motion.

21 THE COURT: Okay, I think --

22 MR. GELTZER: The agreement was not to submit it
23 without their signature.

24 THE COURT: Okay, I think Ms. Schwartz --

25 MR. GELTZER: I did not.

1 THE COURT: -- is going to tell me that there was
2 an agreement to adjourn the motion.

3 MR. GELTZER: No. This motion -- there was an
4 agreement to adjourn this. This was on some weeks ago and
5 Ms. Schwartz asked me to adjourn it because she was going on
6 vacation, and I certainly would be --

7 THE COURT: Okay.

8 MR. GELTZER: -- glad to accommodate her
9 professionally and personally.

10 THE COURT: All right, so let me --

11 MR. GELTZER: Then Mr. Wolf put his motion for
12 retention in Benchmark on for this same day when we were
13 going to be here.

14 THE COURT: Okay. All right, let me talk to
15 Ms. Schwartz for a moment.

16 MR. GELTZER: My final point --

17 THE COURT: Okay.

18 MR. GELTZER: -- Your Honor, if I may.

19 THE COURT: Go ahead.

20 MR. GELTZER: Is that I would just request that
21 the UST enlighten us to eliminate the perplexity as to what
22 their best statutory predicate is --

23 THE COURT: I'm going to ask her.

24 MR. GELTZER: -- and their best case.

25 THE COURT: I'm going to ask her.

1 MR. GELTZER: Because maybe I'm missing it.

2 THE COURT: Okay.

3 MR. GELTZER: Thank you very much, Your Honor.

4 THE COURT: Thank you.

5 MS. SCHWARTZ: Your Honor, I have -- I actually
6 have prepared answers to some of those questions and if Your
7 Honor would --

8 THE COURT: Okay.

9 MS. SCHWARTS: -- allow me.

10 THE COURT: Sure.

11 MS. SCHWARTZ: For the record, Andrea Schwartz for
12 the United States Trustee, Your Honor. On another occasion
13 I had the pleasure of bringing with us our summer intern,
14 Michael Trenton (ph). He's a Seton Law --

15 THE COURT: Hello, welcome.

16 MR. TRENTON: Hi, Your Honor, thank you.

17 MS. SCHWARTZ: -- student, that's -- stand up when
18 he's introduced to the Judge.

19 THE COURT: Where do you go to law school?

20 MR. TRENTON: Seton Law.

21 THE COURT: I've heard of it. Welcome.

22 MR. TRENTON: Thank you.

23 MS. SCHWARTZ: Your Honor -- as Your Honor knows,
24 the heart of the U.S. Trustee's objection is centered on the
25 fundamental bankruptcy principles of disclosure and

1 transparency. Contrary to the trustee's claim regarding the
2 genesis of the U.S. Trustee's request for the disclosure of
3 the rate increase, and I'd like to explain to you how that
4 came about.

5 First, Your Honor, while we are not unfamiliar
6 with adversaries and even the Court questioning why the U.S.
7 Trustee chooses to weigh in on a particular matter or not,
8 the retention of professionals is squarely within the U.S.
9 Trustee's wheelhouse.

10 THE COURT: I don't think anybody's disputing
11 that, Ms. Schwartz.

12 MS. SCHWARTZ: Right, and Your Honor, that would
13 be under Section 586 of Title 28(a)(3)(i). In addition,
14 Your Honor, under 586, the U.S. Trustee is charged with
15 establishing, maintaining, and supervising a panel of
16 private trustees, and that is under 586(a)(1).

17 Second, Your Honor, the Bankruptcy Code Section
18 327 and 328, Bankruptcy Rules 2014, and this Court's Local
19 Rule 2014, require disclosure of compensation arrangements.
20 And more specifically, this Court in its Local Rule 2014-1
21 provides "that the application must state 'specific facts'
22 showing the reasonableness of the terms and conditions of
23 the employment including the terms of any retainer, hourly
24 fee, or contingent arrangement. It is plain that hourly
25 rates are required to be disclosed in the retention

1 application.

2 Under Federal Rule of Bankruptcy Procedure 2016
3 and formerly under our Court's general orders, M-389, M-447,
4 and now as adopted as the amended guidelines for fees and
5 disbursements for professionals in the Southern District of
6 New York under our Local Rule 2016-1, fee applications
7 require that professionals must explain changes in hourly
8 rates from those previously charged and set forth that those
9 rates are for comparably skilled professionals as under
10 330."

11 THE COURT: That last thing is on fee
12 applications.

13 MS. SCHWARTZ: That's correct. Now, let me say
14 something here, Your Honor. At page 15, although a few
15 moments ago Your Honor gave the hypothetical of if the rates
16 change tripling in the next month, you would agree, trustee,
17 that that would be a problem. And he said, that would be
18 wrong, Your Honor, right? Yet in his response to our
19 objection on page 15, the trustee clearly makes it -- makes
20 it clear that it's really none of the U.S. Trustee's
21 business or the Court's where he says "but whether the
22 reasons for the rate increase were caused by an increase in
23 the firm's rent, the firm's desire or obligation to increase
24 its staff's health benefits, its need to pay higher
25 salaries, et cetera", he says, "I submit those reasons are

1 frankly not and should not be within the purview of the UST
2 or the Courts."

3 THE COURT: But that's different, he's talking
4 about the reasons.

5 MS. SCHWARTZ: Well --

6 THE COURT: I'm talking about the fact of the
7 increase. The fact --

8 MS. SCHWARTZ: Hang on, Your Honor. Hang on one
9 second because what the Local Rule says is that they have to
10 set forth the specific facts showing the reasonableness of
11 the terms, right? And in the fee application, they have to
12 explain why they have any rate changes. No one is asking
13 the -- any of the professionals that disclose rate changes
14 to set forth, I have this employee who has to pay their
15 student loans. We don't think you should set your rates at
16 that amount. There's no -- nothing in this at all that's
17 been somehow extrapolated into the response of Mr. Geltzer
18 that the U.S. Trustee, or the Court for that matter, is
19 somehow imposing on trustees its business judgment as to
20 what your rate should be, et cetera.

21 What it simply asks for is disclosure for changes
22 in the compensation and the reasons therefore. Because at
23 the end of the day, Your Honor, a professional gets retained
24 on, as 328(a) says, "reasonable terms", right? So in your
25 scenario with the rate tripling three times, there would be

1 a question as to whether or not that professional was
2 retained on a reasonableness basis. So I want to clear that
3 up because the extrapolation that's been taken in the
4 response is way out of proportion for what was requested.

5 THE COURT: But let me ask you -- so let me ask
6 you a couple things. One, because you put together two
7 pieces: one, that in the retention application you have to
8 disclose what your rates are, right?

9 MS. SCHWARTZ: Right.

10 THE COURT: And who -- your rates generally for
11 your firm and your rates -- you know, the range of the
12 rates.

13 MS. SCHWARTZ: Yeah, like the different classes
14 of professionals.

15 THE COURT: The different classes of professions,
16 right?

17 MS. SCHWARTZ: Correct.

18 THE COURT: But, for example, in a large case,
19 depending upon how -- the twists and turns that the case
20 takes, the components of the blended rate, for example, the
21 mix of people who work on the case is going to change from
22 time to time.

23 MS. SCHWARTZ: That's correct.

24 THE COURT: Right? And we'll find that out at the
25 interims and at the final.

1 MS. SCHWARTZ: That's one point I would like to
2 make a distinction for you on that.

3 THE COURT: So, hold on. So, there's that --

4 MS. SCHWARTZ: In Chapter 11.

5 THE COURT: In Chapter 11, okay, right. There's
6 that --

7 MS. SCHWARTZ: In Chapter 11s.

8 THE COURT: Chapter 11s, right. But same 2014,
9 2016, 330, 328, all apply.

10 MS. SCHWARTZ: And all of the Chapter 11
11 professionals are filing notices of rate increases and
12 that's the point I wanted to make.

13 THE COURT: Hold -- wait. Okay, just try to --
14 we're dancing. Let me lead a little bit, okay?

15 MS. SCHWARTZ: You got it.

16 THE COURT: Okay, all right. But my question is,
17 there's nothing in the initial retention of those
18 professionals that requires that every time they make a
19 staffing change, in other words some incredibly new complex
20 issue arises that requires more \$900 an hour lawyers and
21 fewer \$400 an hour lawyers to make a disclosure. Indeed, it
22 would be impossible because of the nature of those cases.
23 So you have this ambiguity about the cost of the case
24 because it's going to fluctuate from day to day. So that's
25 kind of like point number one.

1 Point number two is you know that I believe and
2 I've written this much, that professionals have an ongoing
3 duty of disclosure. There's an ongoing duty of disclosure.
4 The rules would -- and the law would make no sense if you
5 did it once and then you were done. So we have the fail
6 safe at the end of the case which is that the Court is the
7 ultimate authority on the reasonableness of the fees.
8 That's undisputed.

9 The question is what happens in between. My view,
10 and I think we went through this in GSC, although I try to
11 forget everything we went through in GSC, is that there's an
12 ongoing duty of disclosure. So when I put that, and perhaps
13 this is more -- this is directed at both of you -- to the
14 extent that there's an ongoing duty of disclosure, there's
15 an ongoing duty of disclosure. And that if a rate changes,
16 it would seem to me that even though they -- it is --
17 there's not a provision in an order requiring that a
18 disclosure be made when the rate increases, that there's a
19 baseline obligation to supplement disclosures and to
20 continue to disclose.

21 MS. SCHWARTZ: I completely agree with you, Your
22 Honor.

23 THE COURT: Okay --

24 MS. SCHWARTZ: That's the dispute with the
25 trustee.

1 THE COURT: -- such that if the trustee fails to
2 disclose, he proceeds at his peril, but he's not in
3 violation of an order requiring the disclosure. In other
4 words, the law requires the disclosure, the supplemental
5 disclosure, the law requires it.

6 MS. SCHWARTZ: Well, the trustee takes the
7 position that there is nothing in the statute, in the rules
8 that requires the supplemental disclosure.

9 THE COURT: Well --

10 MS. SCHWARTZ: So I made plain in my papers that
11 this Court, and many other Courts, have read 2014 in a
12 variety of contexts --

13 THE COURT: Correct.

14 MS. SCHWARTZ: -- mainly including conflicts, that
15 there is an implied, ongoing duty of supplementation.
16 That's it.

17 THE COURT: All --

18 MS. SCHWARTZ: And our view, Your Honor --

19 THE COURT: Right.

20 MS. SCHWARTZ: -- our view, Your Honor, was that
21 we're asking this of Chapter 11 professionals. And we said,
22 gee, Chapter 3 of the Bankruptcy Code applies to all
23 chapters. So why isn't it that the U.S. Trustee, who is
24 charged with monitoring and supervising the panel of
25 trustees, isn't requesting that the trustees also make that

1 disclosure, as do Chapter 11. And in fact, an initial point
2 that's very important here, often times, Chapter 7 trustees
3 don't get paid for years. They're -- a case will go on --
4 unless there is going to be --

5 THE COURT: Right.

6 MS. SCHWARTZ: -- an interim distribution --

7 THE COURT: Right.

8 MS. SCHWARTZ: -- we have no idea. But not just
9 us, we have no idea, the Court -- why is it that the U.S.
10 Trustee, the Court should wait three years to evaluate rate
11 increases that are being made? What is the problem with
12 disclosing that and instilling --

13 THE COURT: Well, but that cuts both ways in other
14 words because if you proceed at your peril by not
15 disclosing, right, and the case goes on for -- and I think
16 my record is, I think on some of the cases I inherited from
17 when I took the bench, I think 20 years, 18 years, cases go
18 on -- can go on for a long time. So the professional
19 proceeds at his or her peril if they haven't filed that
20 disclosure.

21 But if the increases are not of the outrageous
22 nature that I posited at the beginning but are modest
23 increases that one expects professionals to do, if there's
24 an outrageous increase that the U.S. Trustee found out
25 about, then they might come in and object or -- I don't even

1 know what the forum would be for something to happen.

2 MS. SCHWARTZ: Well, we wouldn't be --

3 THE COURT: What would happen?

4 MS. SCHWARTZ: If it wasn't -- first of all, if it
5 wasn't disclosed, nothing would happen.

6 THE COURT: No, if it was -- no, if it was
7 disclosed.

8 MS. SCHWARTZ: Right, if it was disclosed --

9 THE COURT: What would --

10 MS. SCHWARTZ: -- then there would be an objection
11 filed, let's say the unreasonableness of the rate, the
12 unreasonableness of the compensation term. Remember 328(a)
13 says that the Court can approve an order for retention on
14 reasonable terms.

15 THE COURT: Right, but then what you're saying is
16 -- but you're saying is that you would then make a motion
17 essentially to rescind the retention order.

18 MS. SCHWARTZ: I'm not -- we could (A) move to
19 disqualify based on an unreasonable term; we could move to
20 seek the rate go -- to be charged at the rate that was
21 disclosed at the outset of the case, possibly without
22 prejudice to an additional rate. Maybe the -- there's no
23 absolutely no hope -- who knows what the facts are going to
24 be.

25 But the point is this, Your Honor, first of all,

1 if the Courts infer an implied duty to supplement under
2 2014, why should it only be limited, as Mr. Geltzer
3 suggests, to conflicts and connections. Other Courts have
4 said, as I've cited in my papers, where the source of
5 compensation wasn't disclosed or other things. Here, it's
6 very clear --

7 THE COURT: But if --

8 MS. SCHWARTZ: -- 2014 requires --

9 THE COURT: I believe that there's a duty to
10 supplement. So to the extent that something is the law,
11 which I'm saying I believe that it's a correct view of the
12 law, of the constellation of rules and Code provisions, and
13 local rules. Although, Ms. Schwartz, I will tell you not
14 the U.S. Trustee's guidelines, which do --

15 MS. SCHWARTZ: I didn't even -- we didn't even
16 cite the U.S. Trustee guidelines at all.

17 THE COURT: -- not have the force of law, as you
18 know.

19 MS. SCHWARTZ: Your Honor, there -- we did not --
20 I am --

21 THE COURT: Okay.

22 MS. SCHWARTZ: -- very, very clear with respect to
23 that. And, Your Honor --

24 THE COURT: Okay.

25 MS. SCHWARTZ: -- this has nothing to do with

1 the --

2 THE COURT: Very good, okay.

3 MS. SCHWARTZ: -- U.S. Trustee guidelines.

4 MR. GELTZER: But you just cited --

5 THE COURT: Mr. Geltzer, come on. You'll have a
6 chance to respond.

7 MS. SCHWARTZ: This is in Your Honor's amended
8 guidelines. This is the Court's guidelines. It's the Court
9 that says you have to explain any changes in your rates from
10 previous or -- it's the Court's guidelines.

11 THE COURT: In the fee application.

12 MS. SCHWARTZ: That's correct. However, Your
13 Honor, the -- we -- this Court is premised on disclosure and
14 transparency.

15 THE COURT: I totally agree, but --

16 MS. SCHWARTZ: All of the fees that the trustee
17 gets paid --

18 THE COURT: Right.

19 MS. SCHWARTZ: -- come from creditors, otherwise
20 money that could go to creditors.

21 THE COURT: Right, but as a --

22 MS. SCHWARTZ: And shouldn't it be the policy, at
23 least of our Court, to promote that.

24 THE COURT: And I'm saying --

25 MS. SCHWARTZ: And let me say one last thing --

1 THE COURT: -- what I'm saying to you is that --
2 what I'm saying to you is that number one, I believe under
3 the law, the Code, the Rules, the Local Rules of this Court,
4 there is an ongoing disclosure obligation, period, full
5 stop. Therefore, to the extent that a professional fails to
6 make supplemental disclosure, they're proceeding at their
7 peril.

8 MS. SCHWARTZ: Okay.

9 THE COURT: But every -- we would have orders that
10 would be 500 pages long if we imported into them every law
11 and every provision.

12 MS. SCHWARTZ: I don't know -- Your Honor, you
13 know, that could be your parade of horrors type --

14 THE COURT: Right.

15 MS. SCHWARTZ: -- but it's not because this Court
16 has entered hundreds and hundreds of orders in Chapter 11
17 cases. And as I've cited in my papers, Your Honor,
18 Mr. Togut (ph), Mr. Gazes (ph), Ms. Teasy-Milner (ph),
19 Ms. Masa Merino (ph), Mr. Messer (ph). I could go on and on
20 and on, have all agreed to --

21 THE COURT: Well --

22 MS. SCHWARTZ: And I want to say one other thing
23 too. The U.S. Trustee -- one of the themes that is present
24 in the papers of this trustee is as he includes and just
25 said before Your Honor at page 5, "I find this personally

1 troublesome by virtue of what I sincerely believe have been
2 acts of harassment and discrimination directed against me by
3 certain individuals in the U.S. Trustee' Office. I submit
4 to you, Your Honor, that there are other issues at play with
5 respect to this objection and that such issues should be
6 properly handled with the U.S. Trustee and not the Court."

7 But that being said, Your Honor --

8 THE COURT: I really don't want to get into all of
9 that --

10 MS. SCHWARTZ: Right, I don't believe it's
11 appropriate for this Court, but I do --

12 THE COURT: -- all right? But I do want to --

13 MS. SCHWARTZ: -- want to let you know one thing.

14 THE COURT: -- understand because Mr. Geltzer
15 makes the point that the U.S. Trustee is not consistently
16 insisting on this provision --

17 MS. SCHWARTZ: Okay.

18 THE COURT: -- and he cites to a number of cases,
19 I believe in the Eastern District. So --

20 MS. SCHWARTZ: Right, Your Honor.

21 THE COURT: -- I always want to know --

22 MS. SCHWARTZ: Yes.

23 THE COURT: -- what the U.S. Trustee's position --

24 MS. SCHWARTZ: I want to tell you about that.

25 THE COURT: Okay.

1 MS. SCHWARTZ: So when this whole process was --
2 when I was assigned to review Mr. Geltzer's retention
3 applications, and I raised the issue. And also, Your Honor,
4 I don't know what page it is, page 5, where Mr. Geltzer
5 quite inappropriately puts in comments that he claims I
6 made. I deny what he put in the paper. But aside from
7 that, Your Honor, what happened was Mr. Geltzer had numerous
8 telephone conferences with the Assistant U.S. Trustee and
9 persuaded the U.S. Trustee to send the proposed language to
10 all of the trustees in the Southern District of New York for
11 comments to see if anybody had a problem with it, to see if
12 anybody had tweaks to it, et cetera. She received a very
13 few minor comments, incorporated them. So, therefore, she
14 gave all the trustees the opportunity to comment on the
15 provision at Mr. Geltzer's suggestion. When she did, the
16 decision was made, okay, we think it would be a good
17 practice. We think it's consistent with the Federal Rules
18 of the Bankruptcy Code, the Court's amended guidelines, et
19 cetera, that we should have that in the retention orders.
20 That's the way this came down, Your Honor.

21 So here -- we stand here today with someone who,
22 as I said, obviously has some other complaints that were --
23 he felt necessary to put in papers before Your Honor,
24 although unrelated to the actual --

25 THE COURT: Well --

1 MS. SCHWARTZ: -- small provision that was going
2 to go in retention orders, which, as I've noted, Your Honor,
3 all the other Judges have signed. Now, with respect to the
4 Eastern District --

5 THE COURT: All the --

6 MS. SCHWARTZ: Hang on. Hang on.

7 THE COURT: Wait, wait, wait. When you say all
8 the other Judges have signed it, because the normal way this
9 happens --

10 MS. SCHWARTZ: Exactly.

11 THE COURT: -- is that I get handed a retention
12 order, I look at it. I specifically check to see UST no
13 objection, and I enter it.

14 MS. SCHWARTZ: That's right.

15 THE COURT: I do not focus on whether or not it
16 has an undertaking to file rate increases or not.

17 MS. SCHWARTZ: Right, and let me say --

18 THE COURT: Full disclosure, I just don't --

19 MS. SCHWARTZ: Let me say one thing. Right.

20 THE COURT: -- because once the U.S. -- once I see
21 the U.S. Trustee sign off --

22 MS. SCHWARTZ: That's right, and --

23 THE COURT: -- and it's not because I'm a lazy --

24 MS. SCHWARTZ: No.

25 THE COURT: I think you know that I'm not lazy.

1 MS. SCHWARTZ: Yeah. Yes, I do, Your Honor, and
2 I'm not --

3 THE COURT: At the end of the --

4 MS. SCHWARTZ: -- lazy either, and I read them
5 very carefully.

6 THE COURT: At the end of the day, I know that no
7 one gets paid a dime without my saying so.

8 MS. SCHWARTZ: That's right. And let me say --

9 THE COURT: So that's the ultimate --

10 MS. SCHWARTZ: -- something else too, Your Honor,
11 that with respect to this whole filing of the motions, et
12 cetera, I will state it was my understanding that there
13 wouldn't be any litigation concerning this proceeding until
14 we -- of this provision until we actually litigated it
15 before Your Honor. And so the fact Mr. Wolf submitted an
16 application that I don't even believe came to me and
17 submitted it and put it on motion, or maybe served me as
18 opposed to the normal procedure by which professionals
19 provide applications, which is what Mr. Wolf did initially
20 when he changed firms and sent me his applications. I think
21 in fairness to Mr. Geltzer, he became frustrated because
22 there was a time delay happening because he had asked for
23 this procedure and notice.

24 THE COURT: Okay, let's just chalk that up to a
25 miscommunication. Let's --

1 MS. SCHWARTZ: Okay, fine, but the point is the
2 reason why his applications were being held in abeyance was
3 because he thought it was appropriate to send this out and
4 give notice to all the trustees and let them comment, which
5 the U.S. Trustee did.

6 THE COURT: Okay, all right.

7 MS. SCHWARTZ: So we held off on the applications.

8 THE COURT: So, Mr. Geltzer -- so the resolution
9 of this, Ms. Schwartz, maybe stand --

10 MS. SCHWARTZ: I didn't realize he was coming up
11 behind me.

12 THE COURT: Yeah, why don't you step -- why don't
13 you both stay at the table so I can talk to both of you at
14 the same time.

15 MS. SCHWARTZ: Sure.

16 MR. GELTZER: May I first reply or --

17 MS. SCHWARTZ: Excuse me. Excuse me.

18 THE COURT: Why don't you both go back to the
19 table?

20 MS. SCHWARTZ: Okay, okay, sure.

21 THE COURT: Go back to the tables.

22 Mr. Geltzer, you can respond, but let's keep it --
23 let's keep our blood pressures down, all right? And then
24 we're going to be done, all right?

25 MR. GELTZER: All right, thank you, Your Honor.

1 THE COURT: Okay.

2 MR. GELTZER: And my blood pressure seems to be a
3 lot lower than Ms. Schwartz's.

4 THE COURT: She's just a zealous advocate, as are
5 you.

6 MR. GELTZER: Let me just separate some personal
7 things. The comments I made about harassment were in the
8 letter I sent to Ms. Rifken (ph) in May. And --

9 THE COURT: But that was incorporated in your
10 papers.

11 MR. GELTZER: They're in the papers here, but
12 they're --

13 THE COURT: Yeah.

14 MR. GELTZER: -- in a letter in May.

15 THE COURT: Right.

16 MR. GELTZER: And the fact that -- I didn't
17 mention Ms. Schwartz by name in my papers, but in that
18 Ms. Schwartz indicates that it was she who initiated the
19 idea, and it was she whom I said told me on -- while she was
20 on a conference -- well, on an open speaker in my office,
21 which I disclosed to her with Mr. Wolf, Mr. Plotzker, and my
22 associate present, but even she decided that it wasn't a
23 good idea. That's the truth, whether she denies it or not,
24 that's the truth (indiscernible).

25 MS. SCHWARTZ: I'd like to respond on that.

1 THE COURT: Guys, listen, listen. We need to --

2 MR. GELTZER: That's the personal -- well, I
3 didn't --

4 THE COURT: We need to get to the end of this.

5 MR. GELTZER: -- Judge, I didn't say anything
6 personal, but if it's going to be --

7 THE COURT: Okay.

8 MR. GELTZER: -- said of me, I'm going to respond
9 and I thank you for permitting me to do so.

10 Now, we talk about rates and disclosure of rates.
11 It's a disclosure. I don't see anything in 2014 that
12 requires a supplemental disclosure, but let's assume --

13 THE COURT: Read the GSC opinion.

14 MR. GELTZER: I'm sorry, I --

15 THE COURT: Read the GSC opinion. It is my view
16 that there is an ongoing duty of disclosure, that the --
17 that there would be no vitality, there would be -- it's not
18 a static obligation --

19 MR. GELTZER: Yes --

20 THE COURT: -- it's a fluid obligation.

21 MR. GELTZER: -- but your opinion, Judge, with all
22 due respect involved conflicts, and disclosure, and
23 disinterestedness. And it wasn't really about rates because
24 if you have to give a supplemental disclosure about rates,
25 number one, as you started to speak up, what if the

1 professional raises his rates, and the trustee knows, and
2 they object to --

3 THE COURT: Well, I don't buy --

4 MR. GELTZER: -- what happens? Nothing happens.

5 THE COURT: I don't buy -- I don't necessarily
6 agree with Ms. Schwartz about that.

7 MR. GELTZER: Then --

8 THE COURT: Two things, okay? Two things, because
9 we need to be done. Number one, it's my view under the law
10 that there's an ongoing duty of disclosure, number one.
11 Therefore, number two, there does not have to be in a
12 retention order something that states the law.

13 MR. GELTZER: I agree with you.

14 THE COURT: Three, you proceed at your peril if
15 you determine not to make additional disclosures.

16 MS. GELTZER: I agree with you. I'm sorry.

17 THE COURT: Four, as a best practice, I believe
18 that those disclosure ought to be made. I think it is
19 chicken soup, plus for you to put -- let me finish -- for
20 you to put in your retention your -- what you call your
21 olive branch because that takes -- that puts the world on
22 notice that in this period of time, or at -- during this
23 period of time, there may be an increase, but if it's more
24 than the 10 percent, you specifically undertake. That does
25 not sit -- that's not a ruling that at the end of the day,

1 the U.S. Trustee can't object to the rate increase.

2 MR. GELTZER: Agreed.

3 THE COURT: In an environment in which legal fees
4 are flat they might say that the increase was not
5 reasonable, the type of case might -- may not have supported
6 all of that as reserved to the end, and the reason that it's
7 a best practice, and the reason that I believe that your
8 colleagues on the panel do it is because they don't want to
9 be in the proceed at your peril category. They want to
10 follow the general principle of disclose, disclose,
11 disclose, disclose. And you don't want to do that. And my
12 view is that the law requires supplemental disclosure. I
13 will enter the order with your notion in it, but I will tell
14 you I believe that it would be -- it's a best practice, it's
15 a better practice, and it may well be required by the --
16 what I view is the duty of ongoing supplemental disclosure
17 that you do it. So --

18 MS. SCHWARTZ: Your Honor, may I be heard --

19 MR. GELTZER: Thank you, Your Honor.

20 THE COURT: Hold on.

21 MS. SCHWARTZ: May I be heard on that point,
22 please?

23 THE COURT: Yeah, let Mr. Geltzer finish.

24 MS. SCHWARTZ: Yes, I just want to be heard on
25 that.

1 THE COURT: Yes, go ahead.

2 MR. GELTZER: Thank you. Your Honor, you know,
3 with this supplemental disclosure, it seems like people --
4 some people think the rate is the most important thing that
5 needs to be supplementally disclosed and if so the reason,
6 but --

7 THE COURT: No, no, no. You made that up. You
8 made that up. The disclosures simply say --

9 MR. GELTZER: It could be anything.

10 THE COURT: -- effective January 1, the rates for
11 this person are going up to this, that, and the other thing.

12 MR. GELTZER: That's not the point I'm making.
13 I'm saying if the UST takes the position that you have to
14 supplementally disclose the rate, and if it increases, you
15 have to give the reason for the increase, then I'm saying
16 that there -- let me just finish the thought and I think
17 I'll be able to communicate it -- then there are other
18 things that are far more important than a change of rate
19 subsequent to the initial disclosure that really could
20 affect --

21 THE COURT: Well, that's the hypothetical --

22 MR. GELTZER: -- the initial retention. For
23 example --

24 THE COURT: That's the hypothetical that I posed
25 to Ms. Schwartz and why I disagree with your statement that

1 there has to be a reason given for the rate increase.

2 That's not the way it works. That's not the way it works.

3 That's just not what people do. It's not what --

4 MS. SCHWARTZ: Actually --

5 MR. GELTZER: But that's what they're asking for.

6 And for example, Your Honor, it's far more important if at a
7 major firm, and in the retentions it usually says the
8 partner who's primarily responsible, it's far more important
9 to supplementally disclose if that partner leaves than it is
10 whether that partner increased his rate by \$75. It's far
11 more important supplementally to disclose if maybe the whole
12 bankruptcy department left. They're not asking for that.
13 It's far more important to disclose --

14 THE COURT: But that's why --

15 MR. GELTZER: -- if our firm goes into bankruptcy,
16 we'll let everybody know --

17 THE COURT: But, that's why --

18 MR. GELTZER: -- but they're not asking for that.

19 THE COURT: -- I'm not -- but that's why none of
20 this is going in a retention order --

21 MR. GELTZER: I agree.

22 THE COURT: -- because the retention order is
23 subject to the law that you're required to make supplemental
24 disclosures of material developments that affect the
25 retention, period, full stop.

1 MR. GELTZER: I agree and if you don't do it --

2 THE COURT: Okay?

3 MR. GELTZER: -- at the end of the day, you may
4 not get paid.

5 THE COURT: Right.

6 MR. GELTZER: I agree with you, Judge.

7 MS. SCHWARTZ: Yeah, I just wanted to make sure,
8 Your Honor, that that olive branch arbitrary number that was
9 proposed by the trustee was not in the order. He could put
10 anything he wants in his affidavit, but I don't think the
11 Court's imprimatur should go on that 10 percent amount.

12 THE COURT: I'm sorry, now I'm really confused.

13 MS. SCHWARTZ: He said it's not going in the order
14 that his olive branch provision -- he can put that in his
15 affidavit that he's going to disclose that, et cetera, but
16 it shouldn't be "approved" that 10 percent. Why should the
17 Court -- in other words, Your Honor, it's the --

18 THE COURT: No, no, no. He -- but he's --

19 MS. SCHWARTZ: -- professional's obligation to
20 do --

21 THE COURT: I'm really confused now.

22 MS. SCHWARTZ: Okay.

23 MR. GELTZER: Your Honor --

24 THE COURT: You don't want that in the order?

25 MR. GELTZER: Excuse me, by the way, Your Honor,

1 you approved the retention in the --

2 THE COURT: Hold on, hold on, please.

3 MR. GELTZER: -- in the (indiscernible) case.

4 THE COURT: I -- please stop for --

5 MR. GELTZER: -- without the trustee's language
6 after Ms. Rifken's May 1 memo, this very Court.

7 THE COURT: Could you just answer the question?
8 The language, Mr. Geltzer, are you proposing that you put
9 that in an affidavit or that it go in the order?

10 MR. GELTZER: I put it in my affidavit.

11 THE COURT: Okay.

12 MR. GELTZER: And I put it in the order to try --

13 THE COURT: If you don't want it in the order,
14 don't put it -- then don't put --

15 MS. SCHWARTZ: I don't want it in the order.

16 MR. GELTZER: I don't mind if it's in the order.

17 THE COURT: Okay, don't put it in the order.

18 MS. SCHWARTZ: It's not going in the order.

19 MR. GELTZER: What do you mean it's not going
20 in --

21 MS. SCHWARTZ: She just said it's not going in the
22 order.

23 MR. GELTZER: First of all, Ms. Schwartz, try not
24 to yell at me.

25 THE COURT: Mr. Geltzer, stop.

1 MS. SCHWARTZ: I'm not yelling at you.

2 THE COURT: Stop, stop.

3 MS. SCHWARTZ: You're rude.

4 THE COURT: Stop, both of you. I don't care
5 whether it's in the order.

6 MR. GELTZER: It was in the Benchmark order. You
7 put it in the Benchmark order.

8 THE COURT: That's fine. I don't --

9 MS. SCHWARTZ: Your Honor, we'd prefer --

10 THE COURT: This is ridiculous.

11 MR. GELTZER: Okay, I'll leave it out of the
12 order.

13 THE COURT: This has gotten to be ridiculous. The
14 Benchmark order has already been entered. Ms. Schwartz, is
15 it your position that that was an error because of an
16 understanding that you had with which Mr. Geltzer disagrees?
17 If that's the case then I will enter a revised order.

18 MS. SCHWARTZ: That is my understanding, Your
19 Honor.

20 THE COURT: All right, then enter a revised order
21 in the Benchmark case.

22 MR. GELTZER: Judge, I'd just like to say for the
23 record, I don't -- I have no objection. I'm sure Mr. Wolf
24 (indiscernible) the objection if that provision is not in
25 the order. But I just want to make it clear, there was no

1 agreement between me --

2 THE COURT: You're going to have to agree to
3 disagree.

4 MR. GELTZER: And I do, indeed.

5 THE COURT: At worst, one of you is not telling
6 the truth. At best, there was a miscommunication.

7 MR. GELTZER: All right, we --

8 THE COURT: I would rather think of it as a
9 miscommunication, all right? So we're going to quote --

10 MR. GELTZER: And there was a miscommunication on
11 a motion with notice.

12 THE COURT: I'm going to call it a
13 miscommunication. I'm going to ask you to submit a revised
14 Benchmark order without the language. We will enter that
15 order on the docket.

16 Let me be perfectly clear. It's this Court's view
17 that there is an ongoing duty to supplement disclosures by
18 professionals who are retained pursuant to order of this
19 Court. At the end of the day before fees get paid, to the
20 extent that the U.S. Trustee, or any other party in
21 interest, can point to disclosures that weren't made, they
22 are entitled to do so and they are entitled to make
23 arguments for reductions, disgorgement, disallowance,
24 revocation of retention, and the like. Any or all of the
25 above.

1 I believe as a best practice consistent with what
2 many professionals do in this district that supplemental
3 disclosures should be made, whether or not it's in the order
4 requiring it or not, again, that's not dispositive for me
5 and for the life of me, I could not tell you whether or not
6 there was a provision in the Adelphia case that required
7 that that disclosure be made. All I can tell you,
8 Mr. Geltzer, is like clockwork we made that disclosure.

9 I take your point that a large Chapter 11 is
10 different than a panel trustee who has -- and I don't know
11 what the number is. I don't know if it's dozens. I don't
12 know if it's hundreds. I don't know. But to the extent
13 that there seems to be an evolving practice among the panel
14 trustees, I would urge you to consider it. You've been at
15 this a long time. You can make your own determination. If
16 you elect not to do that, then at the end of the day, you
17 know, there'll be a determination.

18 MR. GELTZER: I agree with everything that you
19 said and I know this is not really before the Court, I'm
20 willing certainly to continue to put in the disclosure that
21 I put in here of the 10 percent --

22 THE COURT: Well then that's more --

23 MR. GELTZER: I'm willing not to -- I certainly am
24 willing --

25 THE COURT: -- that's more protective.

1 MR. GELTZER: I'm certainly willing not to include
2 it in the order, but I'm just wondering now am I going to
3 have to argue this before every Judge in both of these
4 districts?

5 THE COURT: I don't know. I don't --

6 MR. GELTZER: You know, that would be unfortunate,
7 but --

8 THE COURT: I don't direct what the U.S. Trustee
9 does. I don't direct what my colleagues do. And --

10 MR. GELTZER: And I make the argument -- I'm
11 certainly not looking to get on the wrong side of the U.S.
12 Trustee, but I thought this was wrong. I thought it -- and
13 I still think it's beyond their statutory authority and the
14 case law. And I don't accede to things. I always assent to
15 things by anyone when I think they're wrong.

16 THE COURT: But you just -- you know, just to call
17 the ball and strike, unless I'm missing something, you've
18 just prevailed.

19 MR. GELTZER: I believe so, thank you.

20 THE COURT: All right? Subject to what I
21 described as my view of the law and best practices.

22 MR. GELTZER: Thank you, Judge.

23 THE COURT: All right.

24 MS. SCHWARTZ: Thank you, Your Honor.

25 THE COURT: All right, okay. Try to enjoy the

1 rest of your day.

2 MR. GELTZER: Thank you very much.

3 THE COURT: Thank you.

4 (Whereupon these proceedings were concluded at 12:05
5 PM)

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C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Jamie
Gallagher

Digitally signed by Jamie
Gallagher
DN: cn=Jamie Gallagher, o, ou,
email=digital1@veritext.com,
c=US
Date: 2014.08.08 11:36:33 -04'00'

Veritext

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: August 7, 2014

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